

BIGFORK LAND USE ADVISORY COMMITTEE (BLUAC)

Approved Minutes Thursday December 17, 2020

Meeting was conducted at Bethany Lutheran Church

Chairwoman Susan Johnson called the meeting to order at 4:05 p.m.

Present: Committee member attendees: Susan Johnson, Chany Ockert, Lou McGuire, Jerry Sorensen, Shelley Gonzales, and Brenton Pomeroy (as acting Secretary); Absent: Richard Michaud; Public: 5 members; Flathead County Planning and Zoning (FCPZ): Laura Mooney.

The agenda was approved (m/s, J. Sorensen/C. Ockert), unanimous.

Minutes of the September 24, 2020 meeting were approved (m/s, J. Sorensen/L. McGuire), unanimous.

Administrator's Report and Announcements:

A sign in sheet was provided and emails addresses were requested to ensure distribution of the minutes to those in attendance. Approved minutes and documents are also posted on the County website: [flathead.mt.gov/planning zoning](https://flathead.mt.gov/planning-zoning). Click on [meeting information](#). S. Gonzales provided information concerning a recent ruling on the bridge to Dockstader island noting that it will be required to be demolished and the one lane bridge over the Swan River is planned to be rebuilt by 2023. Also, there are openings on BLUAC. If interested, applicants can go to the Election Department webpage and download an application. Application period is open until the 8th of February and election will be on May 4th 2021. Additionally, a request was made for those in attendance to assist with sanitizing the facility due to Corona virus concerns and to be sure to speak loud as those present were wearing proactive face masks.

Public Comment:

C. Ockert received public comments via email from Maggie Davis (Attachment 1) concerning the ImaginIf library. The comment states that the proposal to collocate the Bigfork Senior Center and library at the ark building on .8 acres from Bethany Lutheran was denied by Flathead County. Forty-five thousand dollars was allotted to study the proposal which ended up reflecting serious limitations of the options selected for consideration. The deadline for public comment is December 31, 2020 and public may weigh in by emailing parcomments@flathead.mt.gov. M. Davis noted some of the benefits of collocating the senior center with the library to include: ample parking, central location, shared infrastructure, restrooms, kitchen,

ADA accessibility, access to small meeting rooms, outdoor space, internet capabilities, maintenance, snow plowing, exterior upkeep, utilities, access, insurance, shared programming, and interaction between generations.

Application:

FZV-20-03: A request by JTC Properties, LLC for a variance to Section 3.16.040(5) of the Flathead County Zoning Regulations (FCZR), to exceed the 40% maximum lot coverage. The subject property is zoned RC-1 (Residential Cluster) and is located at 283 and 287 Eagle Bend Drive in Bigfork, MT, within the Bigfork Zoning District. The property contains approximately 0.194 acres and can legally be described as Lot 56A of Eagle Bend No. 20, located in the Southeast Quarter of the Northwest Quarter of Section 26, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

Staff Report:

Laura Mooney presented the staff report.

The applicant is requesting a 'during or after-the-fact' variance request by JTC Properties for 283 and 287 Eagle Bend dr. on 0.19 acres zoned RC-1. The applicant is requesting a variance for section 3.16.0405 FCZR for exceeding the 40% permitted lot coverage by 3.48%. Agency referrals were sent November 25, 2020 and no comments were received in opposition. Legal notice is scheduled to be published December 20, 2020. Notification to adjoining properties was sent out December 10, 2020 and no comments were received.

(Q) JOHNSON: What does JTC stand for in JTC Properties? (A) TIM CALAWAY: John Thomas Tim Calaway.

(Q) SORENSEN: When was the structure completed? (A) MOONEY: I don't know the exact date as the request came about as a during or after the fact request for a variance because the applicant was initially processing for a short-term rental and in the review it was identified that the maximum lot coverage had been exceeded.

(Q) SORENSEN: Has it been in the last year? (A) MOONEY: It has been recently, yes.

(Q) JOHNSON: So, the applicant has applied for administrative CUP for short term rentals? (A) MOONEY: That is correct and that is on hold now until this is resolved.

(Q) GONZALES: Have they used it at all prior to their application? (A)

MOONEY: The short-term rental? I am not sure about that right now, there is another planner working on that file.

(Q) JOHNSON: Have you been in the unit? (A) MOONEY: We don't ever need to go inside.

(Q) MCGUIRE: It says at the beginning of 3.16.010 that the gross density for units to be clustered is one unit per acre, I.E., a one acre lot can have only one unit and so how do we even have, whether it is two or three on the lot, when it's only about a fifth of an acre? (A) MOONEY: That is a good question and I see how that can be confusing and interpreted differently in the definition since under the permitted uses it does say attached or detached when it is four or less. So, I'd have to make a note to go over that with Mark and maybe try and change the language there.

(Q) MCGUIRE: I would have thought that would be a primary requirement and all the others are subject to that. (A) MOONEY: I can see that but as far as the variance request goes, it is just for the permitted lot coverage not the cluster.

(Q) MCGUIRE: So, if the structure shouldn't be there at all, we should still vote on a variance? Is that what you are suggesting? (A) MOONEY: I see your question now, Yes, this is a permitted use, and so yes, under permitted uses, attached or detached when four or less dwellings, that we do consider what is on the property and that has been developed, permitted use. So, there's no question about its validation, it can be developed on that lot.

(Q) JOHNSON: I had the same question. It sounds like based upon the gross density per units to be clustered is one per acre and this is only a fifth of an acre, so how did it get on in the first place? (A) MOONEY: I think it just means that if its less than one acre, these are your permitted uses, if it is more than one acre that would change? But it is permitted on that lot.

(Q) POMEROY: Is the unit, the structure or each address is a unit? (A) MOONEY: It is one structure with two units.

(Q) MCGUIRE: Did you go on the property and examine it? (A) MOONEY: We did a site visit of the exterior.

(Q) MCGUIRE: Ok, so even if it is only two units, doesn't that still exceed one unit per acre? (A) MOONEY: I can see where the terminology is different,

however, I did go over this with Mark and there is no violation there. It is a permitted use. The structure can be there as it is.

(Q) SORENSEN: Do you know if the Eagle Bend Landowner's Association approved this? (A) MOONEY: The county is not a party to their association. (A) CALAWAY: They approved it. They approved the plans.

(Q) OCKERT: You stated based on the site visit that the decks could be reduced in size? Is that based on a renovation of the decks? (A) MOONEY: Yes, the house was constructed, again, the decks accommodated the outside enjoyment area, so because that would appear to be the easiest reduction option of the maximum lot size, that is just what I suggested in the report.

(Q) GONZALES: On your report it says the decks total 426 ½ square feet and a 3.48 % reduction can bring it into compliance. Doing my math, I came up with 14.84 square feet. (A) MOONEY: the maximum square footage allowed without the variance would reduce it to 295 square feet for the north units deck as well as the two south units deck. So, the difference would be 131 square feet. So, each deck would lose approximately 43.6 square feet.

(Q) GONZALES: There is constant reference that these are duplexes and yet when I did a site inspection, there is three garages, three A/C units, three decks and three water lines, so why is there so much confusion over if this is two or three units? (A) CALAWAY: There is two water lines. (A) MOONEY: That's the way two addresses are registered to two sides of the dwelling and as far as they can tell from the outside, it looks to us it is a duplex. So, until it is further processed, if it is approved for short-term rental, things of that nature, the environmental health office will do an inside inspection.

(Q) GONZALES: For the finding of fact number eight, the beginning has me confused. What do you mean by the variance requested "does not" appear to be the minimum variance? (A) MOONEY: I believe it should say "does".

(Q) GONZALES: Do you happen to know if the owner is a contractor who built the project. (A) MOONEY: I do not have that list and do not believe it was on the application.

L. McGuire initiated some discussion concerning finding of fact number eight concluding that it was acceptable as written.

Applicant Report:

Tim Calaway from Calaway Construction and I did build the units. The middle garage is a golf cart garage which is allowed in Eagle Bend. It has two water services and the only reason it has three A/C units is because the stairs going up, kept the HVAC unit from crossing over to a good portion of the south unit. So, the south unit is twice the size of the north unit. It's a four bedroom on the south and two bedroom on the north. The county did give me a letter stating it would accommodate a triplex but the HOA said no so we went back to the duplex design. The plan on the outside is a duplex, I don't care how you cut it, how you look at it, it is two addresses, two entrances, two water services, two sewer services. The only reason for this variance is that I did not realize that if you build the decks over three feet off the ground, they're considered lot coverage. If they are three feet or less, they are okay. The rock is beautiful. If you look to start blowing up the rock to get the decks on the ground, it would have been a travesty to the look of the whole lot. It looks absolutely gorgeous from the clubhouse. It's a beautiful, I mean, I built to keep the rock and keep the beauty of the lot. If I had taken that lot and started cutting the rock off to get the decks down three feet. The middle ones close. It is almost three feet. Its like a foot on one side and a few inches on the other. The rock as it drops off, your eight feet on one of them and six feet on the other. So, if I lowered the lot and started screwing around with the rocks, I think it would have ruined the lot and that was my misinterpretation. The fact that I misinterpreted lot coverage to being just the building, I didn't understand, and I should have. I've been in the construction business in Bigfork for 45 years and I should have known better. It is my fault. Nobody else's but I just love that lot and I've been looking at it for years. Nobody wanted it because the rock. So, I had a building designed to fit that lot. I just love that lot. If you walk around it, you'll see what I mean. It is really, that rock is so cool. I didn't want to take the decks down in height a lot and hide the rocks either.

(Q) GONZALES: It says in the report that you attempted to buy the adjacent lots, what happened there? (A) CALAWAY: Actually, it wasn't the adjacent lots. To satisfy this requirement, I tried to buy a few feet toward the parking lot, but they didn't want to sell that. So, then I said how about the piece to the south and so I said I could buy a piece of that and they originally said yes and then I haven't heard back from them on that. Then they wanted to sell me the parking lot to the south. The small one but I haven't heard back from them on that. I'm pursuing this as though Eagle Bend can't make up their mind. It's very little. I don't have to have very much at all to get this to be 3.84%. it is a very little piece of property, but it is my screw up because I could have taken those decks down on top of the

rock, but I would have had to carve out a bunch of the rock and that wouldn't have made sense.

(Q) GONZALES: When did you notice that you had a problem? Were you under construction or done? (A) CALAWAY: We were done.

(Q) SORENSEN: So, you found it when you applied for the conditional use permit? (A) CALAWAY: Yes, she (Mooney) discovered it. I didn't.

(Q) GONZALES: If you're not successful in acquiring some adjacent property to alleviate the problem, will you reduce the size of the decks? (A) CALAWAY: Or lower them. They have to be within three feet of the ground.

(Q) GONZALES: And you'll do that construction? (A) CALAWAY: Yea, if I have to, yea. What it will amount to is, stairs coming off the back door on the west side.

(Q) MCGUIRE: I'm a little confused from the application for the short-term rental approval. In the application, it said that the third garage door was a parking space for a car. (A) CALAWAY: That is the intended use, but it could be used to park a small car too. It'd have to be a small car. You could probably park a car in there as good as a golf cart. (A) AJA THOMAS: I can answer that if that is okay. I'm the one that filled out the application on his (T. Calaway) direction. The measurements are conducive with a single car garage. That is why I listed it as a single car parking garage.

Public Agency Comments:

Julie Spencer noted she was present to answer any questions the committee may have.

(Q) GONZALES: Is the hook up to Bigfork water and sewer acceptable to Bigfork Water and Sewer at this present time? (A) SPENCER: It was proposed as a duplex, and so as long as it is considered a duplex its acceptable. If the middle unit ever creates a triplex, we would have to upsize the size of the meter on the larger size to a one inch if its ever to be used as a duplex on the right side and a single unit on the left side. If it is more than a single family per side, it needs to go up to a bigger meter. (A) CALAWAY: It's not a triplex and it's never going to be.

(Q) GONZALES: Are you going to monitor this on a ongoing basis? Is this how you manage properties like this? (A) SPENCER: We didn't even realize this was a triplex until it came up for this subdivision. (A) CALAWAY: It's a duplex with two water and sewer services. (A) SPENCER: We looked, and it had three

addresses. (A) CALAWAY: I will say one other thing. The county when I called up for addresses gave me three addresses for that lot because that is just what the address people did. I don't have any control over it and when I said it is the first one and the last so it's going to be 283 and 287. There is no 285 nor will there ever be.

Public Comment:

None

Staff Reply:

None

Applicant Reply:

None

Committee Discussion:

Sorensen requested to discuss the application prior to approving the findings of fact. He had concerns for the minor size and fact of how minor the request is concerning all the rock that it seems to him to be beyond common sense. His thought was that it is minimal at only 130 square feet and in the area, this does not measure up to be very serious. Ockert expressed concern with defining minor. She had concerns with setting precedent for future request. Sorensen expressed that each application is based on its merit and if another request came in under the same circumstances, he would feel the same. If they had a giant deck and did not have the rock to deal with, he would not say the same thing. There was some discussion about the request being after the fact, similar to a request in November. Johnson pointed out that the staff report states, "variances shall not be granted unless all of the review criteria are met." Sorensen rebutted that the board should let this go. He believes there is a hardship because of the topography and rock. McGuire had concerns that the building should not be there in the first place. Her concern was over the zoning regulation requiring one acre per unit. There was some discussion concerning what the Eagle Bend Homeowner's Association approved. It was verified that they approved the architectural design plans for a duplex but did not review anything concerning zoning. Mooney provided a document from FCPZ that stated the property was approved for a three-unit structure (Attachment 2). McGuire also expressed concern that she did not think the structure was a duplex. Ockert discussed the conversation on after the fact variances that is ongoing at the Board of Adjustments.

Findings of Fact:

Finding of Fact number one was approved. (m/s, S. Gonzales/L. McGuire). Sorensen motioned to amend finding of fact one, to remove the word “not.” The motion was not seconded. All in favor except J. Sorensen.

Finding of Fact number two was approved. (m/s, L. McGuire/J. Sorensen), unanimous.

Finding of Fact number three was approved. (m/s, J. Sorensen/L. McGuire), unanimous.

Finding of Fact number four was approved. (m/s, L. McGuire/J. Sorensen), unanimous.

Finding of Fact number five was approved as amended to omit the word “not”. (m/s, L. McGuire/C. Ockert), unanimous. All in favor except J. Sorensen.

Finding of Fact number six was approved. (m/s, L. McGuire/C. Ockert), unanimous.

Finding of Fact number seven was approved as amended to omit the word “reducing”. (m/s, J. Sorensen/L. McGuire), unanimous.

Finding of Fact number eight was approved. (m/s, L. McGuire/C. Ockert), All in favor except J. Sorensen.

Finding of Fact number nine was approved. (m/s, S. Johnson/L. McGuire), All in favor except C. Ockert.

The Findings of Fact were adopted as amended. (m/s, L. McGuire/S. Johnson) All in favor except J. Sorensen.

Committee Discussion and Vote: McGuire moved to forward a recommendation to the Board of Adjustment to deny FZV-20-03. Motion was seconded by Gonzales, motion passed with all in favor except for J. Sorensen and S. Johnson.

Old Business:

None

New Business:

Brenton Pomeroy was appointed as BLUAC recording secretary. (m/s, J. Sorensen/S. Johnson), unanimous.

Adjourn:

The meeting adjourned at 5:22 p.m.

Brenton Pomeroy, Secretary

2 Attachments:

Attachment 1: Public comments with file concerning library received by email

Attachment 2: Document from FCPZ presented by L. Mooney at meeting